

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF PUERTO RICO  
3

4 UNITED STATES OF AMERICA,  
5

6 Plaintiff  
7

8 v. CRIMINAL 07-0175 (ADC)  
9 JESÚS DANIEL LÓPEZ-PANTOJAS,  
10 Defendant

11 MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
12 RE: RULE 11(c)(1)(B) PROCEEDINGS (PLEA OF GUILTY)

13 I. Personal Background

14 On April 19, 2007, Jesús Daniel López-Pantojas, the defendant herein, was  
15 charged in a two-count indictment. The defendant agrees to plea guilty to both  
16 counts of the indictment.

17 Count one charges that the defendant did knowingly and intentionally possess  
18 with the intent to distribute approximately 500 grams or more of cocaine, a  
19 Schedule II, Narcotic Controlled Substance. All in violation of 21 U.S.C. § 841(a)(1)  
20 and § 841(b)(1)(A). However, he is held accountable for between 200 and 300  
21 grams of cocaine. Count two charges that the defendant did knowingly and willfully  
22 possess a firearm, to wit: a Sig Sauer, semi-automatic .9mm pistol, model p288,  
23 serial number 139584, during and in relation to a drug trafficking crime punishable  
24 under the Controlled Substances Act in violation of 21 U.S.C. § 841(a)(1), involving  
25 the possession with intent to distribute controlled substances as charged in count  
26 one, herein, as defined in 18 U.S.C. § 924(c)(2), which may be prosecuted in a court  
27 of the United States. All in violation of 18 U.S.C. § 924(c)(1).  
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3       Defendant filed a motion for change of plea on January 28, 2008. (Docket  
4 No. 55.)

## 5       II.      Consent to Proceed Before a Magistrate Judge

6       On February 19, 2008, while assisted by Víctor A. Ramos-Rodríguez, Esq., the  
7 defendant, by consent, appeared before me in order to change his previous not guilty  
8 plea to a plea of guilty as to both counts of the indictment.9       In open court the defendant was questioned as to the purpose of the hearing  
10 being held. The defendant responded that the purpose of the hearing was to plead  
11 guilty. The defendant was advised of his right to have all proceedings, including the  
12 change of plea hearing, before a United States district judge. Defendant was given  
13 notice of: (a) the nature and purpose of the hearing; (b) the fact that all inquiries  
14 were to be conducted under oath and that it was expected that his answers would  
15 be truthful (he was also explained that the consequences of lying under oath could  
16 lead to a perjury charge); and (c) his right to have the change of plea proceedings  
17 presided over by a district judge instead of a magistrate judge. The defendant was  
18 also explained the differences between the appointment and functions of the two.  
19 The defendant consent to proceed before this magistrate judge.

## 20       III.     Proceedings Under Rule 11, Federal Rules of Criminal Procedure

## 21           A.     Compliance With Requirements Rule 11(c)(1)

22       Rule 11 of the Federal Rules of Criminal Procedure governs the  
23 acceptance of guilty pleas to federal criminal violations. Pursuant to  
24 Rule 11, in order for a plea of guilty to constitute a valid waiver of the  
25 defendant's right to trial, guilty pleas must be knowing and voluntary:  
26 "Rule 11 was intended to ensure that a defendant who pleads guilty  
27 does so with an 'understanding of the nature of the charge and  
28 consequences of his plea.'" United States v. Cotal-Crespo, 47 F.3d 1, 4  
(1<sup>st</sup> Cir. 1995) (quoting McCarthy v. United States, 394 U.S. 459, 467  
(1969)). [There are three core concerns in these proceedings]: 1) absence of coercion; 2) understanding of the charges; and 3) knowledge  
of the consequences of the guilty plea. United States v. Cotal-Crespo, 47

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4 F.3d at 4 (citing United States v. Allard, 926 F.2d 1237, 1244-45 (1<sup>st</sup>  
Cir. 1991)).5 United States v. Hernández-Wilson, 186 F.3d 1, 5 (1<sup>st</sup> Cir. 1999).6 In response to further questioning, defendant was explained and he  
7 understood that if convicted on count one, the penalty is a term of imprisonment of  
8 not more than 20 years, a fine not to exceed \$1,000,000, and a term of supervised  
9 release of at least three years in addition to any term of incarceration.10 The penalty as to count two is a term of imprisonment of 60 months since the  
11 firearm was possessed, to be served consecutively with any sentence including the  
12 sentence to be imposed in count one. In addition to any term of incarceration the  
13 court will impose a term of supervised release of not more than three years.14 The court must impose a mandatory penalty assessment of \$100, per offense,  
15 to be deposited in the Crime Victim Fund, pursuant 18 U.S.C. § 3013(a).16 The parties agreed and stipulated that defendant does not qualify for a further  
17 reduction pursuant to U.S.S.G. § 5C1.2 (safety valve).18 Defendant was advised that the ultimate sentence was a matter solely for the  
19 court to decide in its discretion and that, even if the maximum imprisonment term  
20 and fine were to be imposed upon him, he later could not withdraw his guilty plea  
21 if he was unhappy with the sentence of the court. The defendant understood this.22 Defendant was explained what the supervised release term means. It was  
23 emphasized that cooperation with the United States Probation officer would assist  
24 the court in reaching a fair sentence.25 The defendant is aware that the court may order him to pay a fine sufficient  
26 to reimburse the government for the costs of any imprisonment, probation or  
27 supervised release and also the court may impose restitution. As part of this plea  
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agreement, the defendant agrees to provide a financial statement as requested to the United States.

Emphasis was made on the fact that at this stage, no prediction or promises as to the sentence to be imposed could be made by anyone. Defendant responded to questions in that no promises, threats, inducements or predictions as to what sentence will be imposed have been made to him.

B. Admonishment of Constitutional Rights

To assure defendant's understanding and awareness of his rights, defendant was advised of his right:

1. To remain silent at trial and be presumed innocent, since it is the government who has the burden of proving his guilt beyond a reasonable doubt.

2. To testify or not to testify at trial, and that no comment could be made by the prosecution in relation to his decision not to testify.

3. To a speedy trial before a district judge and a jury, at which he would be entitled to see and cross examine the government witnesses, present evidence on his behalf, and challenge the government's evidence.

4. To have a unanimous verdict rendered by a jury of twelve persons which would have to be convinced of defendant's guilt beyond a reasonable doubt by means of competent evidence.

5. To use the subpoena power of the court to compel the attendance of witnesses.

Upon listening to the defendant's responses, observing his demeanor and his speaking with his attorney, that to the best of counsel's belief defendant had fully understood his rights, it is determined that defendant is aware of his constitutional rights.

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### C. Consequences of Pleading Guilty

Upon advising defendant of his constitutional rights, he was further advised of the consequences of pleading guilty. Specifically, defendant was advised that by pleading guilty and upon having his guilty plea accepted by the court, he will be giving up the above rights and would be convicted solely on his statement that he is guilty.

Furthermore, the defendant was admonished of the fact that by pleading guilty he would not be allowed later on to withdraw his plea because he eventually might disagree with the sentence imposed, and that when he were under supervised release, and upon violating the conditions of such release, that privilege could be revoked and he could be required to serve an additional term of imprisonment. He was also explained that parole has been abolished.

### D. Plea Agreement

The parties have entered into a written plea agreement that, upon being signed by the government, defense attorney and defendant, was filed and made part of the record. Defendant was clearly warned and recognized having understood that:

1. The plea agreement is not binding upon the sentencing court.

2. The plea agreement is an "agreement" between the defendant, defense attorney and the attorney for the government which is presented as a recommendation to the court in regards to the applicable sentencing adjustments and guidelines, which are advisory.

3. The agreement provides a sentencing recommendation and/or anticipated sentencing guideline computation, that can be either accepted or rejected by the sentencing court.

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4. In spite of the plea agreement and any sentencing recommendation contained therein, the sentencing court retains full discretion to reject such plea agreement and impose any sentence up to the possible maximum penalty prescribed by statute.

Defendant acknowledged having understood this explanation.

E. Government's Evidence (Basis in Fact)

The government presented a proffer of its evidence with which the defendant basically concurred.

Accordingly, it is determined that there is a basis in fact and evidence to establish all elements of the offense charged.

F. Voluntariness

The defendant accepted that no leniency had been promised, no threats had been made to induce him to plead guilty and that he did not feel pressured to plead guilty. He came to the hearing for the purpose of pleading guilty and listened attentively as the prosecutor outlined the facts which it would prove if the case had proceeded to trial.

IV. Conclusion

The defendant, by consent, has appeared before me pursuant to Rule 11, Federal Rules of Criminal Procedure, and has entered a plea of guilty as to both counts of the indictment.

After cautioning and examining the defendant under oath and in open court, concerning each of the subject matters mentioned in Rule 11, as described in the preceding sections, I find that the defendant Jesús Daniel López-Pantojas is competent to enter this guilty plea, is aware of the nature of the offense charged and the maximum statutory penalties that the same carries, understands that the charge

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3 is supported by the government's evidence, has admitted to every element of the  
4 offense charged, and has done so in an intelligent and voluntary manner with full  
5 knowledge of the consequences of his guilty plea.

6 Therefore, I recommend that the court accept the guilty plea of the defendant  
7 and that the defendant be adjudged guilty as to both counts of the indictment.

8 This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B)  
9 and Rule 72(d) of the Local Rules of Court. Any objections to the same must be  
10 specific and must be filed with the Clerk of Court within five (5) days of its receipt.  
11 Rule 510.1, Local Rules of Court; Fed. R. Civ. P. 72(b). Failure to timely file specific  
12 objections to the report and recommendation is a waiver of the right to review by the  
13 district court. United States v. Valencia-Copete, 792 F.2d 4 (1<sup>st</sup> Cir. 1986).

14 At San Juan, Puerto Rico, this 21<sup>st</sup> day of February, 2008.

16 S/ JUSTO ARENAS  
17 Chief United States Magistrate Judge

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